

By: Harris

S.B. No. 312

A BILL TO BE ENTITLED

AN ACT

relating to civil liability of and liability insurance for certain nursing institutions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. LIMITATION ON CIVIL DAMAGES IN CERTAIN ACTIONS

SECTION 1.01. Section 41.008, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an action in which a claimant seeks recovery of exemplary damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Except as provided by this section, exemplary ~~Exemplary~~ damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus
(B) an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or

(2) \$200,000.

(c) Except as provided by Subsection (d), Subsection (b) does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

- 1 (1) Section 19.02 (murder);
- 2 (2) Section 19.03 (capital murder);
- 3 (3) Section 20.04 (aggravated kidnapping);
- 4 (4) Section 22.02 (aggravated assault);
- 5 (5) Section 22.011 (sexual assault);
- 6 (6) Section 22.021 (aggravated sexual assault);
- 7 (7) Section 22.04 (injury to a child, elderly
- 8 individual, or disabled individual);
- 9 (8) Section 32.21 (forgery);
- 10 (9) Section 32.43 (commercial bribery);
- 11 (10) Section 32.45 (misapplication of fiduciary
- 12 property or property of financial institution);
- 13 (11) Section 32.46 (securing execution of document by
- 14 deception);
- 15 (12) Section 32.47 (fraudulent destruction, removal,
- 16 or concealment of writing);
- 17 (13) Chapter 31 (theft) the punishment level for which
- 18 is a felony of the third degree or higher;
- 19 (14) Section 49.07 (intoxication assault); or
- 20 (15) Section 49.08 (intoxication manslaughter).

21 (d) Subsection (b) applies to a cause of action against a
22 defendant that is a not-for-profit nursing institution licensed
23 under Chapter 242, Health and Safety Code, and from whom a plaintiff
24 seeks recovery of exemplary damages based on conduct described as a
25 felony in Section 22.04, Penal Code, only if the defendant is
26 finally convicted under that section for the conduct that gives
27 rise to the plaintiff's cause of action.

1 (e) In this section, "intentionally" and "knowingly" have
2 the same meanings assigned those terms in Sections 6.03(a) and (b),
3 Penal Code.

4 (f) [~~(e)~~] The provisions of Subsections (a), (b), [~~and~~] (b),
5 (d), and (h) may not be made known to a jury by any means, including
6 voir dire, introduction into evidence, argument, or instruction.

7 (g) [~~(f)~~] Subsection (b) does not apply to a cause of action
8 for damages arising from the manufacture of methamphetamine as
9 described by Chapter 99.

10 (h) Exemplary damages awarded against a defendant that is a
11 not-for-profit nursing institution licensed under Chapter 242,
12 Health and Safety Code, may not exceed an amount equal to the
13 greater of:

14 (1)(A) two times the amount of economic damages; plus
15 (B) an amount equal to any noneconomic damages
16 found by the jury, not to exceed \$250,000; or

17 (2) \$200,000.

18 SECTION 1.02. Section 41.008, Civil Practice and Remedies
19 Code, as amended by this article, applies only to an action filed on
20 or after the effective date of this Act. An action filed before the
21 effective date of this Act is governed by the law in effect
22 immediately before that date, and that law is continued in effect
23 for that purpose.

24 ARTICLE 2. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

25 SECTION 2.01. Subchapter B, Chapter 32, Human Resources
26 Code, is amended by adding Section 32.060 to read as follows:

27 Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO

1 NOT-FOR-PROFIT NURSING INSTITUTIONS. (a) The following are not
2 admissible as evidence in a civil action:

3 (1) any finding by the department that a
4 not-for-profit institution licensed under Chapter 242, Health and
5 Safety Code, has violated a standard for participation in the
6 medical assistance program under this chapter; or

7 (2) the fact of the assessment of a monetary penalty
8 against a not-for-profit institution under Section 32.021 or the
9 payment of the penalty by an institution.

10 (b) This section does not apply in an enforcement action in
11 which the state or an agency or political subdivision of the state
12 is a party.

13 SECTION 2.02. Subchapter A, Chapter 242, Health and Safety
14 Code, is amended by adding Section 242.017 to read as follows:

15 Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL
16 ACTIONS. (a) The following are not admissible as evidence in a
17 civil action:

18 (1) any finding by the department that a
19 not-for-profit institution has violated this chapter or a rule
20 adopted under this chapter; or

21 (2) the fact of the assessment of a penalty against a
22 not-for-profit institution under this chapter or the payment of the
23 penalty by an institution.

24 (b) This section does not apply in an enforcement action in
25 which the state or an agency or political subdivision of the state
26 is a party.

27 SECTION 2.03. The following laws are repealed:

